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Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Philippines: Zero conviction under Anti-Torture Law

1. The Asian Legal Resource Centre (ALRC) expresses its deep concern on the failure of the Philippine government to investigate, prosecute and convict state agents and their accomplices for violating the Anti-Torture Act of 2009. The law has been in operation for over four years now; however, none of the perpetrators involved in the dozens of cases we have documented have been convicted for their crimes.

2. The ALRC recalls the two Resolutions adopted by the General Assembly on 19 December 2011 (A/RES/66/150, para. 13) and on 20 December 2012 (A/RES/67/161, para. 14), prohibiting those convicted for torture to get involved "in the custody, interrogation or treatment of any person under arrest"; however, the zero conviction renders these Resolutions irrelevant. Those accused of torture are still very much involved in taking custody of persons. While there is no conviction against state agents, public officials and their accomplices committing torture, torture victims are routinely detained, charged and prosecuted on evidence taken by way of torture.

3. During the 19th session of the HRC, on February 24, 2012 the ALRC has already raised its concern on the emerging pattern of dismissals of torture complaints. The ALRC has informed the Council about the five torture cases. Of the five, two years on only one case—that of Darius Evangelista, tortured by police in Tondo, Manila in March 5, 2010, has seen progress where some of perpetrators have been arrested and prosecuted. Of the remainder of the four cases, and the subsequent cases that we have documented, many have never been effectively investigated, prosecuted, let alone the perpetrators convicted.

4. The ALRC recalls the report of Juan E. Méndez, Special Rapporteur on torture, containing his Observations on communications transmitted to Governments. On the Philippines, he noted the inability of the government to respond to communications (A/HRC/22/53/Add.4, para. 110) concerning the torture case of Melissa Roxas, and "thereby failing to cooperate with the mandate" issued by the Council. The ALRC shares fully with the observations of Mr. Mendez. This failure to cooperate is the regular practice of the government, rather than an exception based on ALRC's experience of asking the government to intervene.

5. The Philippine government fails not only to cooperate with the Council's mandate, but also to effectively implement the Anti-Torture Act:

6. **Failure to "promptly investigate":** In Resolutions adopted by the General Assembly, on 19 December 2011 (A/RES/66/150, para. 7), on 20 December 2012 (A/RES/67/161, para. 7); and by the Human Rights Council, on 12 April 2013 (A/HRC/RES/22/21, paras. 4, 8), they strongly emphasize the importance of investigating all allegations of torture promptly. Section 9 (a) of the Anti-Torture Act, also legally requires "a maximum period of sixty (60) working days" to complete an investigation on complaint for torture.

7. However, the five government agencies—the Commission on Human Rights (CHR), the Public Attorney's Office (PAO), the Philippine National Police (PNP), the National Bureau of Investigation (NBI) and Armed Forces of the Philippines (AFP)—who has the legal obligation to investigate torture complaints, fail to comply with this provision in a routine, systematic and widespread manner.

8. The failure to "promptly investigate" occurs: first, by either not conducting or choosing to ignore complaints of torture submitted to it; second, even if they investigate, the result of their investigation and findings take months, years or do not appear at all. The government's failure to "investigate promptly" violates the absolute and non-derogable nature of the prohibition of torture in the Convention against Torture (CAT), in General Assembly Resolutions (A/RES/66/150; A/RES/67/161), Resolution of the Council (A/HRC/RES/22/21), and the Anti-Torture Act.

9. On the first category, no investigation was conducted on the torture of a rape suspect by former Manila Mayor Alfredo Lim on June 21, 2013 or the torture of three activists, one of whom was a woman, on November 23, 2009, at the headquarters of the Philippine Air Force Camp in Batangas. By not investigating promptly and not investigating complaints at all effectively denies torture victims possibilities of remedy and redress. As a result, evidence crucial for prosecution: the psychological and medical condition of the victim, testimonies of the victims and her/his potential witnesses, amongst others, are not collected.

10. On the second category, in the torture case of Darius Evangelista, it took more than a year for the Department of Justice (DoJ) to conclude that the policemen involved had criminal liability. In the case of Rolly Panesa, a security guard tortured by police and military officers in October 5, 2012, the DoJ has not yet completed its investigation to date. The delay in concluding investigation results in the perpetrators avoiding criminal responsibility by either going into hiding or leaving the country, victims, their families and the witnesses are exposed to threats and reprisals; or, victims and complainants losing interest in prosecuting the case.

11. The case of a 17-year-old boy who was tortured inside the women and children's desk of the police in Kidapawan City on December 11, 2010, is a clear example to this. The victim, his family and witnesses, withdrew from prosecution due to insecurity. The boy and his parents filed criminal, administrative and civil charges against the police; however, due to the failure of the prosecutor to conclude its investigation promptly and due to the absence of protection, they withdrew their complaint.

12. This case of the 17-year-old boy is one of the many examples where the CHR conducted its investigation, but the copy of their investigation report was never made available to the complainants. There are many cases where the CHR conducted its field investigation; but in cases where the ALRC had documented, neither we nor the complainants have obtained copies of their reports, let alone the progress of investigation. The latest was the torture of three boys by village (barangay) officials, who were receiving orders from a policeman, after they were arrested in Malate, Manila on February 8, 2013. The CHR did not produce a report on this.

13. **Failure to prosecute "all acts of torture":** The General Assembly Resolutions (A/RES/66/150, para. 14) and (A/RES/67/161, para. 15) have emphasized that the "perpetrators of all acts of torture must be prosecuted." These Resolutions considers grave acts of torture arising from armed conflict; but, if there is failure in prosecuting the perpetrators who commits systematic and widespread torture as part of its daily investigation, systematic torture arising from armed conflict would certainly have little room to be investigated, let alone prosecuted.

14. The torture of a 16-year-old boy caught in fighting between the rebels and soldiers in Zamboanga City on September 20, 2013 speaks to this. He was interrogated in absence of a legal counsel, deprived of food and forced to admit he was a rebel. His case is one of the hundreds of alleged rebels, including ordinary villagers, arrested in the aftermath of armed conflict. They are presently detained in Camp Bagong Diwa, Taguig City. Most of these detainees are believed to have been tortured. The ALRC is not aware of any investigation neither on the boy's case nor the rest of the detainees.

15. There is a domestic law, the Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity (RA. 9851), passed in December 11, 2009 stipulating acts of torture "committed as part of a widespread or systematic attack" constitutes crimes against humanity. But clearly the manner of how the government investigates and prosecutes "all acts of torture" committed in "widespread and systematic," be they armed conflict or part of its daily investigation, they are not compatible to the absolute and non-derogable nature of the prohibition of torture.

16. The Asian Human Rights Commission (AHRC), its sister organisation of ALRC has documented numerous cases of torture since the Anti-Torture Act was passed, and we have concluded that the use of torture is neither an exceptional nor isolated cases. The police, the military, public officials and persons acting upon their orders, systematically and in widespread manner use torture as its method to investigate, punish alleged criminal offenders, to enforce law and order, and they are strongly convinced that this is an effective method.

17. The discovery of a "wheel of torture (in Filipino *roleta ng kamalasan)*", a roulette which describes various methods of torture, on January 24, 2014 inside a private subdivision operated by and controlled by policemen in Biñan, Laguna, clearly demonstrates that the use of torture is deeply part of the security apparatus. The discovery was possible only because the CHR took an exceptional action, by investigating promptly and conducting on-site inspections of the detention facility even though, officially, they are not included in the list of official detention centres submitted by the police.

18. **Failure to protect victims and complainants**: To ensure that the complaints of torture are investigated promptly and prosecuted effectively, it is a prerequisite that adequate protection must be afforded to victims,

complainants and witnesses. Section 9 (b) of the Anti-Torture Act and Section 16 of the Implementing Rules and Regulations (IRR), does contain robust provisions obligating the government to provide complainants "sufficient protection against all forms of harassment" and that its protection must be "sufficient" respectively. However, this rights remains on paper.

19. The ALRC has observed that the failure of the government to offer, provide and ensure adequate protection to complainants is one of the reasons why torture complaints cannot be investigated and prosecuted. The IRR did indicate that victims and complainants "may avail of benefits" under the witness protection program, but in reality, neither the victim nor complainant can do so due to the restrictive nature of the Witness Protection, Security and Benefit Act, on who it could admit in the program. This law is also not clear on whether it is obliged to provide protection to torture victims, say those in detention or being prosecuted based on evidence of torture.

20. In fact, none of the torture victims, complainants and witnesses that the AHRC has documented has been admitted under this program. The government is clearly failing to protect victims, complainants and witnesses, when it is needed the most. For example, in the case of the 17-year-old torture victim in Kidapawan City, despite the AHRC's repeated appeals to provide him, his family and his potential witness protection, the government did nothing. The victim and his family withdraw from prosecuting for fear of reprisals from the policemen.

21. The ALRC has observed that the inability, if not deliberate act in providing victims and complainants protection, is due to pervasive deeply-rooted bias against persons claiming to have been tortured by the police and the military. The mentality amongst some of the police, prosecutors and judges, is that: they do not make distinction between a torture victim exercising her/his right to remedy by complaining; and from a torture victim they claimed using torture as defence to get even with the authorities and to get away from crimes. There is a deeply held bias and stereotypes that criminals often claims torture once they are arrested, resulting in them taking lightly complaints of torture.

Recommendations

22. In light of the above and bearing in mind the absolute and non-derogable nature of torture, the ALRC urges the government of the Philippines to:

a. Initiate reforms, by law and in its practice by ensuring that the rights of the victims, complainants and witnesses, to seek remedy and redress are ensured by providing them adequate protection;

b. Put reports by the Oversight Committee, that was "created to periodically oversee" the implementation of the Anti-Torture Act of 2009 under the public domain so that civil society organisations are able to access them for transparency and collaborate for further enhancement of its implementation, and;

c. Study discrepancies between existing practices and applications of law in the Philippines with the Convention against Torture, and various other international law and jurisprudence on torture so that the failure of the current criminal justice systems and interpretations of laws can be adjusted for protection from torture.